IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 17843 of 2007(Y)

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PETITIONER:

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CASINO HOTEL, A UNIT OF M/S.HOTEL &
ALLIED TRADES PRIVATE LIMITED, WILLINGDON ISLAND,
KOCHI - 3, REPRESENTED BY ITS EXECUTIVE OFFICER,
MR.MICHAEL DOMINIC.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS

RESPONDENTS:

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STATE OF KERALA, REPRESENTED BY THE
SECRETARY (TAXES), TRIVANDRUM.

BY G.P. SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23/07/2007, ALONG WITH WPC 18037 OF 2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ASSESSMENT ORDER DATED 29.9.2003 PASSED BY THE SALES TAX OFFICER (WC & LT), MATTANCHERRY.

EXT.P2 TRUE COPY OF THE ORDER DATED 24.12.2005 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS).

EXT.P3 TRUE COPY OF THE COMMON ORDER DATED 31.8.2006 ISSUED BY THE APPELLATE TRIBUNAL, ADDL. BENCH II, ERNAKULAM.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

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W.P.C. NO. 17843, 18037, 18183,
18184, & 18963 OF 2007

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Dated this the 23rd day of July, 2007

**C.R.**

JUDGMENT

Petitioners in the connected cases are star hotels challenging the levy of luxury tax on charges collected from customers for rendering ayurvedic treatment, for providing laundry service and for arranging boating. The common issues involved in all the cases pertain to charges collected for ayurvedic treatment, and for laundry services rendered to customers and the additional issue raised in WPC Nos. 18037, 18183 and 18184 of 2007 is whether charges collected from customers for boating arranged by the hotel attract luxury tax. I heard counsel appearing for the petitioners, and Government Pleader appearing for the respondents.

2. Counsel for the petitioners relied on the decision of the Karnataka High court in PIEM HOTELS V. STATE OF KARNATAKA, 129 STC 373 and contended that laundry charges cannot be subjected to luxury tax. However this issue is already

decided by this Court against the petitioners vide decision in KOVALAM ASHOKA BEACH RESORT V. SALES TAX OFFICER, 14 KTR 417. Since the Division Bench of the Karnataka High Court has not considered the above decision of this Court, I proceed to reconsider the matter once again.

3. The main argument advanced by counsel for the petitioners is that the charging Section, namely Section 4 of the Kerala Tax on Luxuries Act, 1976, provides for rate of luxury tax which depends on the rates charged for accommodation for residence and other amenities and services provided in the hotel. In view of the wording of the charging section, counsel contended that only such of the amenities and services covered by standard rates charged from every customer in the hotel only are covered by luxury tax. In other words, standard rates charged from customers for accommodation only should be subject to luxury tax. Ayurvedic treatment, laundry, boating, etc., are optional services availed by customers and are therefore not covered by charging section, is the contention. Government Pleader on the other hand submitted that all amenities and services which are charged along with rentals or charged separately will attract luxury tax because

definition clause "for luxury provided in a hotel" covers every amenity and service provided in a hotel. In order to appreciate the contentions, the relevant provisions have to be gone into. Accordingly the two definition clauses, namely, "luxury" and "luxury provided in a hotel" as defined under Section 2(ee) and 2(f) along with charging Section 4 are extracted hereunder:

> 2(ee) "luxury" means a commodity or service that ministers comfort or pleasure
>
> 2(f) "Luxury provided in a hotel" means accommodation for residence and other amenities and services provided in a hotel, the rate of charges for which (exclusive of charges for food, drink and telephone calls) is fifteen rupees per day or more;
>
> 4. Levy and collection of Luxury tax.- (1) Subject to the provisions of this Act, there shall be levied and collected a tax in respect of any luxury provided in a hotel and in respect of a commodity included in the schedule (hereinafter called the "luxury tax").
>
> (2) The luxury tax shall be payable by the person residing in a hotel at the following rates, namely:-
>
> (a) where the rate of charges for accommodation for residence and other amenities and services (exclusive of charges for food, drink and telephone calls) is less than rupees (seventy five) per day (per room) NIL

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|---|---|
| (b) where such rate is less than (seventy five) rupees per day (per room) | seven and half per cent of such rate |
| (c) where the rate of charges for accommodation for residence in air conditioned rooms and other amenities and services (exclusive of charges for food, drink and telephone call) is not less than (rupees seventy five and not more than rupees five hundred) of per day (per room) | ten per cent of such rate |
| (d) where such rate is more than rupees five hundred per day (per room) | Fifteen per cent of such rate |

(3)....."

It is obvious from the definition clause of "luxury" that both commodity and services that ministers comfort or pleasure attract tax. The charging section no doubt provides for rate of tax which is directly related to the rate charged for accmmodation for residence and other amenities and services provided in a hotel. Rate of charge obviously means flat rate which is static irrespective of customer use. There may be cases where hotel charges combined rates for accommodation, food and other services and amenities. There may also be cases where hotel charges rent for residence and separate charges for other amenities and

services provided in the hotel. It is clear from the charging section that in order to attract liability, the statute makes no difference as to whether charges for services and amenities are combined with rent or such charges are separately collected in addition to rent. All what the charging section says is that rate of tax will have to be determined by taking into account the total charges recovered and tax will be payable on such amount irrespective of whether rent, amenities and services are separately charged or not.

4. It is clear from the impugned orders that Ayurvedic treatment and laundry services, though optional, are provided by the hotel to the customers. These are certainly in the nature of services rendered by the hotel to the customers and therefore are squarely covered by the definition clause of "luxury provided in a hotel". I am unable to follow the decision of the Karnataka High Court because provisions of both the statutes are not similar. While under the Kerala Act tax is payable for rent and charges collected for every service and amenity provided in a hotel except on charges for food, drink and telephone charges, the Karnataka Act enumerates items of services that attract luxury tax. It is seen from the provisions of the Karnataka Act that laundry charges are

specifically excluded from the scope of luxury tax. In the circumstances, I reconfirm the view taken in the earlier decision of this Court and hold that laundry charges attract luxury tax. Similar is the position with regard to Ayurvedic treatment provided to customers whether it is in the nature of treatment or massage, the same being a service provided in the hotel, attracts luxury tax.

5. So far as the charges collected from the customers for arranging boating it is seen that the hotel has arranged boating for the customers and charged the customers along with rent and charges for other services. Even though counsel for the petitioner contended that boating cannot be provided by the hotel, and it is only arranged by the hotel, it is clear from the orders that there is no contract between the customer and the boat owner. On the other hand, boats are arranged by the hotel at it's own cost and boating charges are collected from the party. The charges paid for the boat by the hotel has nothing to do with charges recovered from the customers. Services rendered in a hotel need not necessarily mean services provided in the hotel building, but include services arranged by the hotel to it's customers, though the service is rendered outside the hotel premises. In the

circumstances, I hold that boating arranged by the hotel for staying guests also attracts luxury tax. In the circumstances, the challenge against demands are rejected and the impugned orders of the Tribunal are upheld.

6. Counsel for the petitioners pointed out that interest under Section 10 is demanded from the end of relevant year and not for the period of default after arrears fell due after services of notice of demand. On going through Section 10, I find interest can be demanded for the period of default which obviously means default in payment after expiry of the date provided for payment under notice of demand served along with assessment orders. The assessing officer is directed to revise demand of interest for the actual period of default and recover interest only for such period.

W.Ps. are disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge